

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH D. TURNER,  
Petitioner,

v.

J. PRICE,  
Respondent.

Case No. 16-cv-07007-JST (PR)

**ORDER OF DISMISSAL**

On December 7, 2016, petitioner, then a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the \$5.00 filing fee. Petitioner was released from custody on April 9, 2017. See Dkt. No. 7.<sup>1</sup>

Petitioner filed a previous petition for writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 14-4374 JST (PR). The Court denied the first petition on the merits on April 8, 2016.

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as petitioner's prior federal habeas petition. A successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not sought or obtained such an order from the United States Court of Appeals for the Ninth Circuit. Even if petitioner has new claims, he must still obtain the necessary authorization under Section 2244(b) from the United States Court of Appeals before he may

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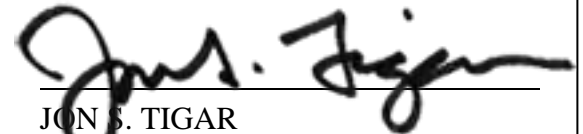
<sup>1</sup> A habeas petitioner must be in custody under the conviction or sentence under attack at the time the petition is filed. Maleng v. Cook, 490 U.S. 488, 490-91 (1989). If a petitioner is in custody at the time he files his federal habeas petition, his subsequent release from custody does not deprive the court of its jurisdiction. See Chaker v. Crogan, 428 F.3d 1215, 1219 (9th Cir. 2005).

1 proceed. The petition is accordingly DISMISSED without prejudice to re-filing if petitioner  
2 obtains the necessary order.

3 The Clerk shall enter judgment and close the file.

4 **IT IS SO ORDERED.**

5 Dated: April 24, 2017

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9 JON S. TIGAR  
10 United States District Judge  
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